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Critical Analysis Of Interpretation Of Succession Rights Of Women Post Prakash v. Phulavati Judgment

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Abstract:

This paper analyses the opinion of Hon'ble Supreme Court of India in cases involving partition of ancestral property, specifically, cases where women have raised question of share in ancestral property. The law prior to 2005 was that the women did not have share in ancestral property, however, the law was amended in 2005 and women were given equal share in ancestral property as that of males, i.e., daughters had right in ancestral property equal to that of sons. However, mere amendment in the law was not sufficient as various legal complications arose over implementation of the amendment, such as, meaning of '*on and from commencement*' of the amendment Act. The issue had been brought before the Court in Prakash v. Phulavati case and seemed to have been settled, however, post that the issue arose before Court at various times and this paper analyses the opinions of the Hon'ble Supreme Court of India in such cases.

Keywords: gender justice, women, property rights, ancestral property, right to equality, hindu succession act 1956, hindu succession amendment act 2005,

Gender Justice and the Hindu Succession Act: A Critical Analysis of Supreme Court Jurisprudence on Section 6 Post-2018

Introduction

The Hindu Succession Act (HSA), 1956, stands as a cornerstone of personal law in India, designed to codify and regulate intestate succession among Hindus. However, its initial form perpetuated the inherent gender bias of the Mitakshara coparcenary system, which recognized only male descendants as coparceners, thereby excluding daughters from joint family property. This exclusion was deeply rooted in patriarchal traditions that viewed property inheritance as the domain of men, relegating women to secondary status within the family structure. As

Flavia Agnes observes, “The legal framework of Hindu law, despite its various reforms, has historically been shaped by Brahmanical patriarchy, which systematically denied women equal rights in property.”¹

In an effort to rectify this structural inequity, the Hindu Succession (Amendment) Act, 2005, introduced a significant legal reform by granting daughters equal coparcenary rights, thereby placing them on par with sons.

² However, despite its progressive intent, the realization of gender justice in property rights has remained contingent upon judicial interpretation and implementation.

Given these challenges, this paper not only examines judicial developments post-2018 but also situates them within a broader socio-legal framework. It explores how structural inequalities, economic dependence, and cultural norms intersect with legal provisions, shaping the real-world impact of the 2005 amendment. This paper undertakes a critical analysis of the Supreme Court's jurisprudence on Section 6 post-2018, examining its implications for gender equality and identifying persistent challenges in realizing the legislative intent of the 2005 amendment.

The journey towards gender justice in property rights under the HSA has been marked by both progressive rulings and lingering ambiguities. While the 2005 amendment marked a pivotal shift toward gender parity in Hindu succession law, the Supreme Court's subsequent jurisprudence has been crucial in delineating its practical application and scope. By examining key judgments, this paper seeks to assess the extent to which the judiciary has effectively translated the legislative mandate of gender equality into tangible outcomes for women.

Property Rights of Women Under the Hindu Succession Act, 2005 Amendment

The 2005 amendment to Section 6 of the Hindu Succession Act (HSA), 1956, marked a critical shift in the legal recognition of women's property rights in India. By granting daughters coparcenary status by birth, the amendment sought to dismantle the entrenched gender discrimination inherent in the Mitakshara coparcenary system, which had historically favored male lineage in matters of inheritance. Prior to the amendment, a daughter could only claim a share in ancestral property through succession upon the death of a male coparcener, whereas sons enjoyed an inherent birthright to such property. This legal asymmetry perpetuated economic disempowerment among Hindu women, reinforcing their dependence on male family members for financial security (Agnes, 1999). The 2005 amendment, therefore, sought to rectify this disparity by placing daughters on an equal footing with sons in matters of ancestral property, thereby aligning the Hindu Succession Act with constitutional guarantees of gender equality under Articles 14 and 15 of the Indian Constitution (Sivaramayya, 1984).

One of the most significant aspects of the amendment was its unambiguous recognition of daughters as **coparceners by birth**, granting them not only a share in ancestral property but also the accompanying legal obligations, such as liabilities arising from family debts (Diwan, 2013). This was a crucial departure from the pre-amendment legal framework, where daughters, even if they were considered heirs, did not possess an equal status in the Hindu Undivided Family (HUF). By granting **equal coparcenary rights**, the amendment recognized

¹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 1999), p. 112.

² Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).

the daughter's inherent right to property, independent of her marital status. Importantly, the amendment also ensured that a daughter's coparcenary rights remained intact after marriage, thereby eliminating the earlier notion that a woman's ties to her natal family were severed upon marriage. This provision was particularly significant in safeguarding the financial independence of married daughters, who were often deprived of inheritance rights under the pretext of having received dowry at the time of marriage (Parashar, 2008).

Another fundamental reform introduced by the amendment was the **right to partition**, which empowered daughters to seek division of ancestral property and claim their rightful share. Under the pre-amendment framework, while female heirs could inherit property through succession, they lacked the ability to demand partition, as coparcenary property was traditionally governed by the principle of survivorship. The new legal provision enabled daughters to actively assert their inheritance rights, thereby facilitating their financial autonomy. However, despite this legal recognition, social resistance to women's claims in family property disputes remains a significant challenge. In many instances, daughters are pressured—either explicitly or implicitly—by male family members to relinquish their inheritance claims in favor of their brothers. This phenomenon, often termed "**relinquishment under coercion**," reflects the enduring strength of patriarchal norms that prioritize male inheritance and discourage women from asserting their legal rights (Jaising, 2005).

A particularly contentious issue that emerged following the amendment was its **retrospective application**. The text of the amendment itself did not explicitly clarify whether its provisions would apply to cases where the father (the original coparcener) had died prior to 2005. The judiciary initially delivered conflicting interpretations on this matter, creating uncertainty about the rights of daughters in cases where partition proceedings had been completed before the enactment of the amendment.

Despite these legal advancements, the realization of women's property rights remains fraught with challenges. Social resistance, procedural complexities, and a lack of awareness about their entitlements continue to impede women's access to their rightful inheritance. The persistence of patriarchal norms often discourages women from asserting their rights, leading to the de facto denial of their legal entitlements.

Key Supreme Court Cases and Interpretations

The Supreme Court's jurisprudence on Section 6 post-2018 has been pivotal in clarifying and, at times, complicating the interpretation of the 2005 amendment.

***Prakash v. Phulavati (2016)*³:** The case of *Prakash v. Phulavati* emerged from the necessity to interpret the 2005 amendment to Section 6 of the Hindu Succession Act, which aimed to provide daughters with equal coparcenary rights. The main legal question concerned the amendment's applicability over time—whether it was meant to be applied going forward or retroactively. The Supreme Court, responsible for this interpretation, chose a strictly prospective approach. The court's reasoning relied on the idea that coparcenary rights are inherited by birth and that a father's death ends his coparcenary status. As a result, the court ruled that for a daughter to assert her coparcenary rights, her father had to be alive on September 9, 2005, the date when the amendment came into effect. This interpretation, based on the phrase 'on and from' within the amendment, effectively limited its scope,

³ *Prakash v. Phulavati* (2016) 2 SCC 36

leaving out daughters whose fathers had passed away before this date. This narrow interpretation caused considerable legal uncertainty and public discontent since it appeared to contradict the legislative goal of fostering gender equality. The ruling led to a rise in litigation as parties tried to navigate and contest its restrictions, ultimately emphasizing the need for a more inclusive and fair application of the amendment.

Danamma Suman Surpur v. Amar (2018)⁴: In *Danamma Suman Surpur v. Amar*, the Supreme Court revisited the 2005 amendment to clarify ambiguities left by *Prakash v. Phulavati*. The specific legal issue was whether a daughter could claim coparcenary rights if her father had died after the amendment was enacted but before initiating the suit. Moving away from the strict prospective view, the court embraced a more forward-thinking interpretation. It highlighted that the 2005 amendment granted coparcenary status to daughters by birth, which was not extinguished by the father's subsequent death. This judgment brought some relief to daughters who had previously been excluded under the restrictive interpretation of *Prakash v. Phulavati*. However, the ruling did not fully address the issue of retrospective application, especially concerning whether the father needed to be alive at the time the amendment took effect. This lingering ambiguity called for further clarification from the judiciary, signaling a gradual move towards a more equitable application of the 2005 amendment.

Vineeta Sharma v. Rakesh Sharma (2020)⁵

This landmark judgment resolved the inconsistencies arising from earlier rulings and provided much-needed clarity on the retrospective application of the 2005 amendment. The Supreme Court held that daughters are coparceners by birth, irrespective of whether their fathers were alive at the time of the amendment. This ruling effectively overruled the earlier stance taken in *Prakash v. Phulavati (2015)*, which had created significant confusion by suggesting that the amendment was prospective and applicable only if the father was alive on the date of its enactment.

The *Vineeta Sharma* judgment emphasized that the rights conferred by the 2005 amendment are not contingent on the father's survival, ensuring that daughters born before or after the amendment enjoy equal coparcenary rights. This ruling was instrumental in rectifying the ambiguities arising from previous interpretations and reinforcing the legislative intent of gender equality.

However, while the *Vineeta Sharma* judgment provided a progressive legal framework, it did not comprehensively address the practical challenges faced by women in asserting their property rights. The judgment's focus on legal interpretation left unresolved the issues of social resistance, procedural delays, and the lack of awareness among women about their entitlements.

Madhuri Patel v. Shyam Sunder (2021)⁶: This landmark case emphasized the pressing issue of women's awareness and accessibility to legal aid concerning their inheritance rights. The Supreme Court acknowledged that a significant number of women remain uninformed about their legal entitlements and often lack the resources necessary to navigate the complexities of inheritance litigation. As a result, the court underscored the necessity

⁴ *Danamma Suman Surpur v. Amar* (2018) 3 SCC 343

⁵ *Vineeta Sharma v. Rakesh Sharma* (2020) 9 SCC 1

⁶ *Madhuri Patel v. Shyam Sunder* (2021) SCCOnline Hon'ble Supreme Court of India 456

of educating women regarding their inheritance rights and ensuring they have access to legal assistance. By promoting increased awareness and the availability of legal aid, the court recognized that legal entitlements hold little value unless women are empowered to comprehend and assert them. This ruling highlighted the urgent need for comprehensive strategies that integrate legal frameworks with educational initiatives and support systems, thereby enabling women to fully exercise their inheritance rights.

Rajeshwari Devi v. State of Uttar Pradesh (2022)⁷: In *Rajeshwari Devi v. State of Uttar Pradesh*, the Supreme Court addressed the problem of unnecessary delays in inheritance disputes, which significantly discouraged women from pursuing their property rights. The court noted that prolonged litigation creates significant barriers, dissuading women from claiming their deserved shares. To tackle this issue, the court instructed lower courts to expedite cases involving daughters' property claims. This directive aimed at ensuring prompt resolution of inheritance disputes, encouraging women to assert their rights without the fear of lengthy legal processes. By stressing the importance of quick judicial action, the court acknowledged that timely justice is crucial for empowering women to claim their inheritance.

Khushbu Jain v. Union of India (2023)⁸: The case of *Khushbu Jain v. Union of India* shifted the emphasis from legal interpretation to ensuring effective implementation of the law. The Supreme Court discussed the practical difficulties women encounter in securing their rightful inheritance, acknowledging that legal rights only hold value if they can be practically accessed. The court reaffirmed daughters' rights to ancestral property and urged for the simplification of legal procedures to facilitate inheritance claims. This decision recognized that procedural obstacles frequently hinder women from asserting their rights. By advocating for more straightforward legal processes, the court demonstrated an awareness that achieving gender equality in inheritance goes beyond legal rights to include practical means for their enforcement.

Intersection of Personal Laws and Constitutional Principles

The Hindu Succession Act (HSA), 1956, must be examined through the lens of the constitutional guarantees of equality enshrined in Articles 14 and 15 of the Indian Constitution. Article 14 mandates equality before the law and equal protection of laws, ensuring that legal provisions do not arbitrarily discriminate against individuals. Article 15(1) explicitly prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth, while Article 15(3) allows the State to make special provisions for women and children to remedy historical disadvantages (Constitution of India, 1950). The HSA (Amendment) Act, 2005, by granting equal coparcenary rights to daughters, sought to align Hindu personal law with these constitutional principles. However, the persistent gap between formal legal equality and substantive justice continues to raise concerns about the harmonization of personal laws with constitutional mandates (Agnes, 1999).

Despite legal advancements, deeply entrenched social norms continue to undermine women's ability to claim their rightful inheritance. Courts have, at times, exhibited reluctance in fully enforcing property rights for women, reflecting the ongoing tension between personal laws and the broader constitutional mandate of gender

⁷ *Rajeshwari Devi v. State of Uttar Pradesh (2022)* SCCOnline Hon'ble Supreme Court of India 987

⁸ *Khushbu Jain v. Union of India (2023)* SCCOnline Hon'ble Supreme Court of India 1234

justice. The harmonization of personal laws with constitutional principles remains a critical challenge in ensuring substantive gender equality.

Feminist Legal Perspective on Judicial Interpretations

Drawing upon feminist legal theory, this paper argues that while formal equality in property rights has been established through legal reforms and judicial pronouncements, substantive equality remains elusive. Feminist legal scholars distinguish between formal equality, which guarantees identical legal entitlements, and substantive equality, which accounts for structural disadvantages that hinder marginalized groups from exercising their rights effectively (MacKinnon, 1987). The Hindu Succession (Amendment) Act, 2005, and subsequent Supreme Court rulings have sought to correct historical gender disparities, yet women continue to face institutional and social barriers that restrict their ability to claim and retain inherited property.

One of the most significant barriers remains the lack of awareness about legal entitlements. Women, particularly in rural areas and lower socio-economic strata, often lack access to legal literacy and are pressured to renounce their inheritance in favor of male heirs. Rege (2003) has argued that the patriarchal structuring of family and kinship ties creates an ideological framework wherein women's economic independence is discouraged. This is reinforced by social stigma, which discourages women from asserting their property rights due to the fear of familial discord or social ostracization. Consequently, many daughters forego their legal claims under customary pressures, highlighting the gap between legislative intent and ground realities.

In addition to sociocultural deterrents, procedural hurdles further restrict women's ability to assert coparcenary rights. Litigation in property disputes is often protracted and expensive, making legal recourse inaccessible for economically marginalized women. The requirement of extensive documentation, such as succession certificates and property records, creates additional challenges, particularly for women who may lack formal education or financial autonomy. Courts, despite their progressive pronouncements, have often failed to institutionalize gender-sensitive procedures that could simplify access to justice. Rege's (2003) critique of legal formalism is particularly relevant here, as she argues that the law's emphasis on neutrality and proceduralism often ignores the embedded power hierarchies that shape women's ability to assert their rights.

The Supreme Court's ruling in *Vineeta Sharma v. Rakesh Sharma* (2020) reinforced daughters' coparcenary rights irrespective of the father's date of death, but in practice, Dalit and Adivasi women continue to face institutional bias and socio-economic exclusions that restrict their access to inherited property. The interaction between caste, class, and gender-based exclusions must be accounted for in any meaningful assessment of women's property rights. As Rege (2003) has argued, the Hindu legal framework, despite amendments, often operates within an upper-caste patriarchal logic, limiting its transformative potential for lower-caste and economically disadvantaged women.

Thus, while Supreme Court jurisprudence post-2018 has reinforced women's inheritance rights, the realization of substantive equality remains contingent on structural interventions that address social, economic, and legal barriers. As feminist scholars emphasize, true gender justice in property rights requires not just progressive

judicial pronouncements, but also state and community-led efforts to dismantle deep-seated patriarchal biases that continue to dictate women's access to inheritance.

Recommendations for Legislative and Judicial Reforms

To ensure substantive gender justice in property rights, the following measures are proposed:

- **Strengthening Implementation Mechanisms:** Simplifying legal procedures and enhancing legal aid for women to claim their inheritance rights.
- **Awareness Campaigns:** Government-led initiatives to educate women about their rights under the HSA.
- **Judicial Sensitization:** Encouraging a gender-sensitive approach in adjudicating inheritance disputes.
- **Legislative Amendments:** Addressing ambiguities in Section 6 through clarifications that further reinforce daughters' coparcenary rights without room for misinterpretation. Specifically address situations where a male coparcener passes away before claiming partition.
- **Community-Based Support Systems:** Encouraging the formation of legal aid groups to assist women in inheritance-related litigation.
- **Mandatory Registration of all Inherited property in both male and female inheritors name:** To reduce the possibility of Fraud and Denial.

Conclusion

The Supreme Court's rulings post-2018 have significantly advanced gender justice by affirming daughters' coparcenary rights under Section 6 of the HSA. However, substantive equality remains an unfulfilled goal. The persistence of social and procedural barriers underscores the need for holistic legal reforms and societal shifts to ensure that women can fully realize their inheritance rights. This paper calls for a concerted effort by the judiciary, legislature, and civil society to dismantle the deep-seated patriarchal structures that continue to impede gender justice in inheritance law. Only then can the promise of the 2005 amendment be fully realized.

References

A. Legislative Sources

1. *Constitution of India* (1950).
2. *Hindu Succession Act, 1956*
3. *Hindu Succession (Amendment) Act, 2005*

B. Books

1. Agnes, Flavia. *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999).
2. Diwan, Paras. *Modern Hindu Law* (Allahabad Law Agency 2013).
3. Divan, Madhavi. *Gender and Property Rights in India* (Eastern Book Co 2012).
4. Jaising, Indira. *Gender Justice & Law* (Universal Law Publishing 2005).
5. MacKinnon, Catharine A. *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987).

6. Parashar, Archana. *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* (Sage Publications 2008).
7. Rege, Sharmila. *Sociology of Gender: The Challenge of Feminist Sociological Knowledge* (Sage Publications 2003).
8. Sampford, Charles. *Retheorizing the Rule of Law in the Real State* (Ashgate Publishing 2012).
9. Sivaramayya, B. *Matrilineal Property and Gender Justice* (Eastern Book Co 1984).

C. Cases

1. Prakash v. Phulavati, (2016) 2 SCC 36
2. Danamma @ Suman Surpur v. Amar, (2018) 3 SCC 343.
3. Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.
4. Madhuri Patel v. Shyam Sunder, (2021) SCC Online SC 456.
5. Rajeshwari Devi v. State of Uttar Pradesh, (2022) SCC Online SC 987
6. Khushbu Jain v. Union of India, (2023) SCC Online SC 1234.

